

A U S T I N C I T Y C O U N C I L
AGENDA

Thursday, November 02, 2006

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**Public Hearings and Possible Actions
RECOMMENDATION FOR COUNCIL ACTION****ITEM No. 63**

Subject: Conduct a public hearing and consider variance requests to allow construction of a single-family residence at 1115 Desirable Drive, Austin, TX, in the 25-year and 100-year floodplains of Tannehill Branch and to waive the requirement to dedicate a drainage easement to the full limit of the 100-year floodplain for the footprint of the residence.

Additional Backup Material

(click to open)

- [staff report](#)
- [site location maps](#)
- [Ordinance](#)

For More Information: Ray Windsor, 974-3362, Gary M Kosut, P.E., 974-3374; George E. Oswald, P.E., 974-3369

Mr. Matt Worrall, the agent of the owner of the property and applicant, proposes to construct a new residence at 1115 Desirable Drive. The property is in the northeast quadrant of the City of Austin near the intersection of Airport Boulevard and Springdale Road and the confluence of Tannehill Branch and Boggy Creek.

The proposed house is the subject of Building Permit Number BP-06-1962R. The applicant proposes a new, two-story, single-family house in the 100-year and 25-year floodplains of Tannehill Branch. The applicant seeks variances to the City of Austin's floodplain management regulations in order to obtain a building permit to construct a 1870 sq. ft. single-family house (the proposed two-story structure includes 1535 sq. ft. of conditioned space, 264 sq. ft. of attached garage, and a 71 sq. ft. porch). The 100-year floodplain almost inundates the entire lot. Most of the lot is also within the 25-year floodplain according to a recent field survey. The depth of water at the Desirable Drive curb line during the 100-year flood event will be approximately 1.0 foot deep. Water depth at the rear of the proposed house on the side nearest the creek will be approximately 2.3 feet deep during the 100-year flood event.

**THE WATERSHED PROTECTION AND DEVELOPMENT REVIEW DEPARTMENT
RECOMMENDS APPROVAL OF THIS VARIANCE REQUEST.**

SUMMARY OF FINDINGS

1. **THE PROPOSED CONSTRUCTION IS IN THE 100-YEAR AND 25-YEAR FLOODPLAINS OF TANNEHILL BRANCH.** The rear of the lot includes the channel of Tannehill Branch.
2. **EMERGENCY RESPONDER ACCESS.** For the 100-year flood event the depth of floodwaters will be 1.0 feet at the curb in front of the existing structure. The structure will be surrounded by 1.0 feet (front of property) to 2.3 feet (rear of property) of water. The water depths at curb line and at the front of the house are within the limits of access by Austin Fire Department fire apparatus.
3. **ADDITIONAL OCCUPANCY IN THE FLOODPLAIN.** The proposed construction will increase human occupancy in the floodplain.
4. **FINISHED FLOOR ABOVE MINIMUM REQUIRED ELEVATION.** The proposed construction *meets* City of Austin minimum elevation requirements (proposed elevation is at least one-foot above the 100-year floodplain elevation).
5. **FLOODS IN THE VICINITY.** The November 16 and 23, 2004 storm events resulted in light to moderate flooding in the lower Tannehill Branch watershed. Street flooding was reported in the 4700 and 4900 block of Jain Lane which is 1600 feet upstream of the subject property.
6. **HARDSHIP CONDITIONS FOR THE PROPERTY EXISTS.** The failure to grant the variance will result in exceptional hardship by rendering the lot un-developable;

APPLICABLE CODE AND VARIANCES REQUESTED

1. LDC Section 25-7-92 (Encroachment on Floodplain Prohibited) prohibits construction of a building or parking area in the 25-year floodplain.

VARIANCE REQUESTED: *The applicant requests a variance from LDC Section 25-7-92(A) to allow encroachment of the proposed structure into the 25-year floodplain.*

- II. LDC Section 25-12-3, (Local Amendment to the Building Code), Section 1612.4.3 Means of Egress provides that normal access to a building shall be by direct connection with an area that is a minimum of one foot above the design flood elevation.

VARIANCE REQUESTED: *The applicant requests a variance to Building Code Section 1612.4.3, to allow construction of a structure without normal access by connection with an area that is a minimum of one foot above the design flood elevation. Access to the building from Desirable Drive will be within the 100-year floodplain with a depth of 1.0 feet of water at the curb line in front of the proposed structure and a depth of about 1.0 feet of water at the front wall of the structure.*

- III. LDC Section 25-7-152 (Dedication of Easements and Rights-of-Way) requires that the owner of real property proposed to be developed dedicate to the public an easement or right-of-way for a drainage facility, open or enclosed, and stormwater flow to the limits of the 100-year floodplain.

VARIANCE REQUESTED: *The applicant requests a variance to exclude the footprint of the proposed structure from the requirement to dedicate a drainage easement to the full extent of the 100-year floodplain.*

- IV. LDC Section 25-7-2, Obstruction of Waterways Prohibited prohibits the placement of an obstruction in a waterway.

VARIANCE REQUESTED: *The applicant requests a variance to place a structure (an obstruction to flow of floodwaters) in a waterway.*

PREREQUISITES FOR GRANTING VARIANCES AND FINDINGS:

Per LDC Section 25-12-3, Technical Codes, Section G.105 Variances, variances shall only be issued upon an affirmative finding of the five conditions described below:

PREREQUISITE

1.) A technical showing of good and sufficient cause based on the unique characteristics of the size, configuration or topography of the site.

Insufficient causes for issuing a variance may include the following.

- *Less than a drastic depreciation of property.*
- *Convenience of property owner.*
- *Circumstances of owner not land.*
- *To obtain better financial return.*
- *Property similar to others in neighborhood.*
- *Hardship created by owner's own actions.*

FINDING

1.) **NOT MET.** Essentially the entire lot is in the 100-year floodplain and unique site size, configuration or topography characteristics have not been demonstrated.

2.) A determination that failure to grant the variance would result in exceptional hardship by rendering the lot undevelopable;

The location of the floodplain on the property is a characteristic of the land. Hardship refers to the effect of the floodplain status of the land on its use; it does not refer to personal or financial circumstances of the current owner of the land. In fact financial hardship, inconvenience, aesthetic considerations, physical handicaps, personal preferences or the disapproval of one's neighbors do not qualify as exceptional hardships. The applicant has the burden of proving exceptional hardship. FEMA advises that the reasons for granting floodplain management variances must be substantial and the proof compelling. The claimed hardship must be exceptional, unusual and peculiar to the property involved.

3.) A determination that granting of a variance would not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing laws or conflict with existing laws or ordinances.

4.) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

Relief is defined as respite from unnecessary hardship. Unnecessary hardship is defined as:

- *Loss of all beneficial or productive use.*
- *Deprivation of reasonable return on property.*
- *Deprivation of all or any reasonable use.*
- *Rendering property valueless.*
- *Inability to develop property in compliance with the regulations.*
- *Reasonable use cannot be made consistent with the regulation.*

2.) **CONDITION IS MET.** Failure to grant the proposed variance will render the lot undevelopable because of the effect of its location in the floodplain.

3.) **CONDITION IS SUBSTANTIALLY MET.** The proposed addition will not increase floodplain water-surface elevations. The approval of this variance request will, however, increase public safety threat and increase public expense because more occupants will be allowed in harm's way Risk from flood waters due to evacuation or rescue attempts by first responders should be minimal.

4.) **CONDITION IS MET.** In this case, the proposed project and variance request is the minimum required to afford relief.

5.) Notification to the applicant in writing over the signature of the building official that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance, and that such construction below the base flood level increases risks to life and property.

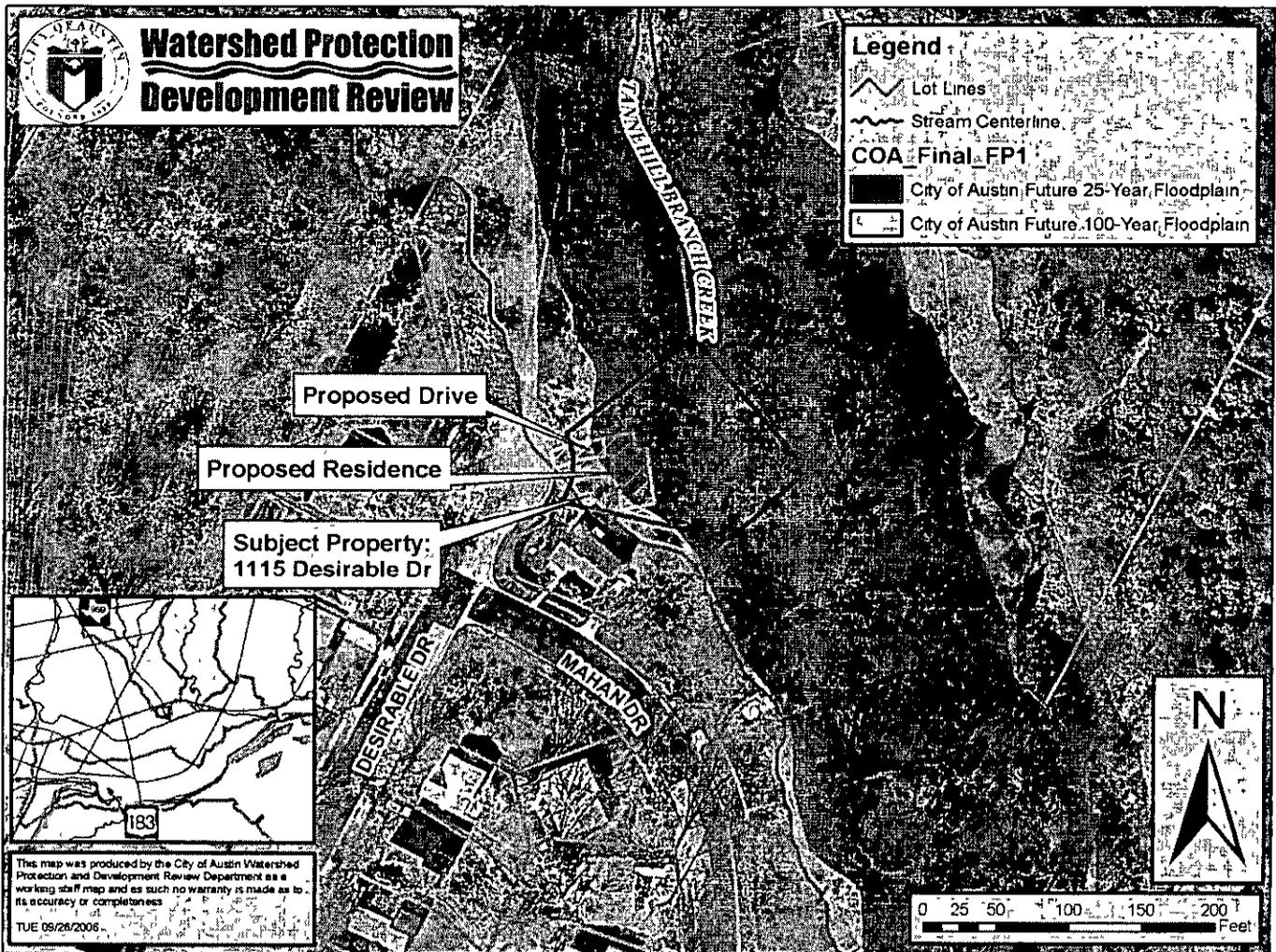
5.) **CONDITION IS MET** because the proposed house floor elevation would be above the required regulatory flood datum (100-year floodplain elevation plus one foot). The applicant's letter of April 12, 2006 indicates that he is willing to build the finished floor to 2 feet above the 100-year floodplain elevation, or in other words, to 452.80 feet elevation.

VARIANCE CONDITIONS

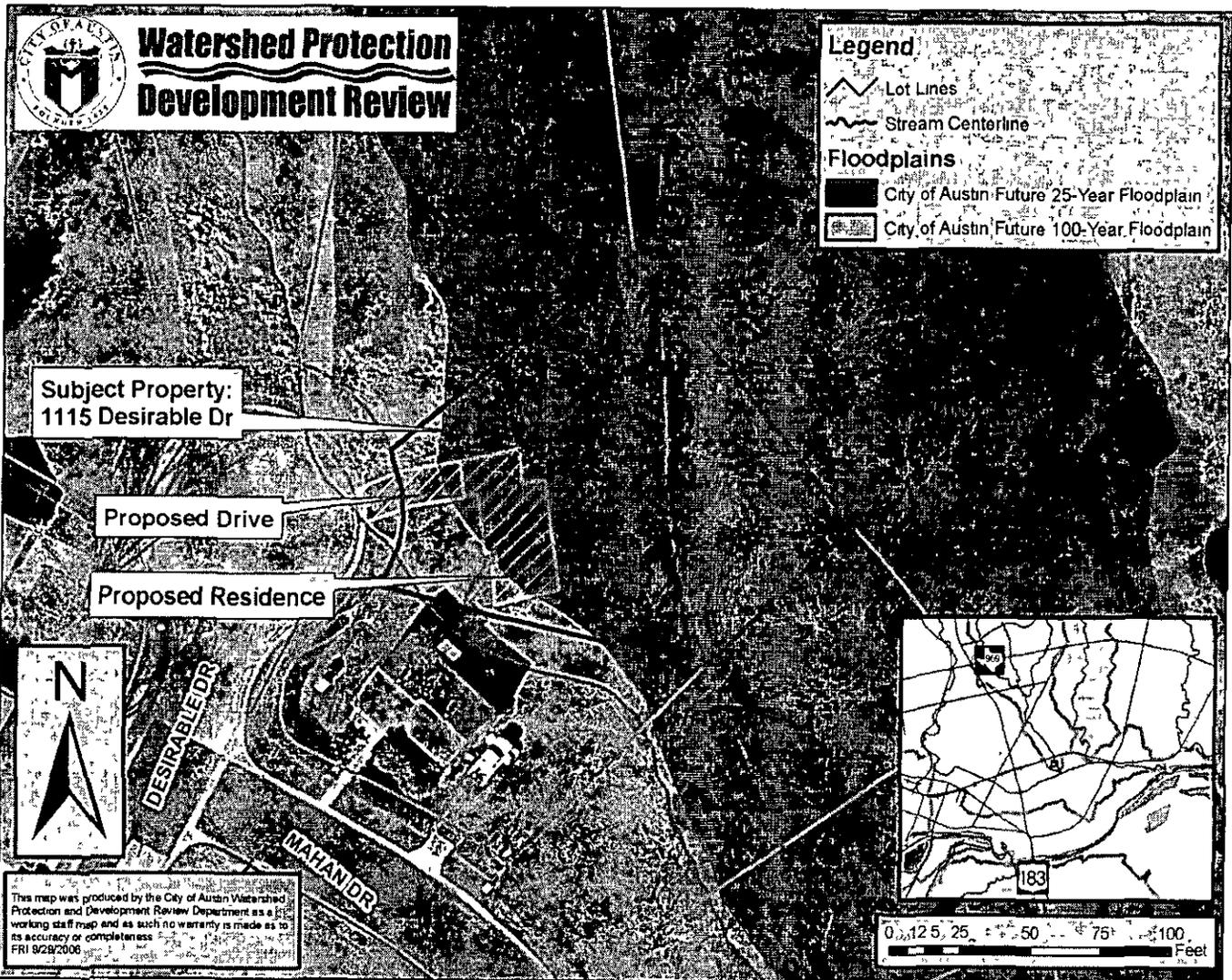
In the event that the variance request is granted, the variance is effective only upon the satisfaction of the following condition:

1. The applicant shall submit a completed Elevation Certificate certifying the elevation of the finished floor of the structure, signed by a Texas registered professional land surveyor, before the City may issue a Certificate of Occupancy for the proposed structure.

Site Location Map with Floodplains for 1115 Desirable Drive



Close-Up of Site Location Map with Floodplains for 1115 Desirable Drive



ORDINANCE NO.

1 AN ORDINANCE GRANTING VARIANCES FOR PROPERTY LOCATED AT
2 1115 DESIRABLE DRIVE FROM CERTAIN FLOODPLAIN REGULATIONS
3 PRESCRIBED BY THE CITY CODE FOR CONSTRUCTING A NEW HOUSE IN
4 THE 25 AND 100-YEAR FLOODPLAINS; AND PROVIDING AN EXPIRATION
5 FOR THE VARIANCES.
6

7 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:
8

9 **PART 1.** This ordinance applies to the construction of a new residence at 1115 Desirable
10 Drive within the 25 and 100-year floodplains, subject to Building Permit Application No.
11 BP-06-1962R.

12 **PART 2.** Council has considered the factors for granting a variance from floodplain
13 regulations prescribed by City Code Section 25-12-3 Building Code Appendix G, Section
14 G105.7 (*Conditions for Issuance*). Council finds that the variance granted by this
15 ordinance is the minimum necessary to afford relief, is based on good and sufficient
16 cause, and failure to grant the variance would result in exceptional hardship. Council
17 further finds that the variance granted in this ordinance will not result in increased flood
18 heights, additional threats to public safety, extraordinary public expense, or create
19 nuisance, cause fraud on or victimization of the public, or conflict with existing local
20 laws or ordinances.

21 **PART 3.** A variance is granted from:

- 22 (A) the requirement that normal access to a building be by direct connection
23 with an area that is a minimum of one foot above the design flood elevation
24 prescribed by Section 25-12-3, Building Code Section 1612.4.3 (*Means of*
25 *Egress*) of the City Code; and
- 26 (B) the prohibition against placing an obstruction in a waterway prescribed by
27 City Code Section 25-7-2 (*Obstruction of Waterways Prohibited*); and
- 28 (C) the restriction on construction in the 25 and 100-year floodplains prescribed
29 by City Code Section 25-7-92 (*Encroachment On Floodplain Prohibited*);
30 and
- 31 (D) the easement requirement in City Code Section 25-7-152 (*Dedication of*
32 *Easements and Rights-of-Way*) to exclude the residence from the
33 requirement to dedicate an easement to the limits of the 100-year floodplain;

1 provided that the applicant dedicate an easement as required by Section 25-
2 7-152 for that portion of the property for which a variance is not granted.

3 **PART 4.** If the project for which this variance is granted does not receive all necessary
4 building permits on or before November 2, 2007, this variance expires.

5 **PART 5.** Approval of this variance does not constitute approval of zoning, subdivision,
6 a site plan, a building permit, or any other development permit, and it does not constitute
7 a commitment to any particular land use, intensity of land use, or utility services.
8 Approval of this variance does not constitute a guarantee of flood insurance availability,
9 rates, or requirements.

10 **PART 6.** This ordinance takes effect on _____, 2006.

11 **PASSED AND APPROVED**

12 _____, 2006

13 §
14 §
15 §
16 Will Wynn
17 Mayor

18
19
20 **APPROVED:**

21 David Allan Smith
22 City Attorney

23 **ATTEST:**

24 Shirley A. Gentry
25 City Clerk